

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Engineering

AGENDA DATE: December 21, 2004

CONTACT PERSON/PHONE: Rick Conner, P.E., City Engineer Ext. 4423/Bashar Abugalyon, P.E.,  
Chief Development Engineer Ext. 4157

DISTRICT(S) AFFECTED: 6

**SUBJECT:**

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Paseos Del Sol Unit Two Subdivision-obtain permission from the City Council for a Conditional "B" permit as per Section 18.02.103.1.1.6 Prerequisite to Issuance of Permits

**BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

In accordance with Section 18.02.103.1.1.6 Prerequisite to Issuance of Permits, see attached Letter from Paseos Del Sol Joint Venture, owner and developer for Paseos Del Sol Unit Two Subdivision.

**PRIOR COUNCIL ACTION:**

Has the Council previously considered this item or a closely related one?

Not for this subdivision

**AMOUNT AND SOURCE OF FUNDING:**

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

**BOARD / COMMISSION ACTION:**

Enter appropriate comments or N/A

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

CITY CLERK DEPT.  
04 DEC 10 PM 3:06

Date: December 9, 2004

TO: City Clerk

FROM: Lucy L. McGee

Please place the following item on the Regular Agenda for the Council Meeting of:  
December 21, 2004.

Item should read as follows:

Discussion and action on approval of Conditional “B” building permits for:

Paseos Del Sol Unit Two Subdivision (District 6)

Special Instructions: ENGINEERING DEPARTMENT FOR INFORMATION  
CONTACT CHIEF DEVELOPMENT ENGINEER BASHAR ABUGALYON, P.E.  
AT 541-4157.

City Clerk’s Use

Action Taken: \_\_\_\_\_ Item No. \_\_\_\_\_

## ENGINEERING DEPARTMENT

### Development Division

DATE: December 8, 2004

TO: Mayor & City Council

FROM: Bashar Abugalyon, P.E., Development Division Chief Engineer *BA*

SUBJECT: Conditional "B" Building Permits  
Paseos Del Sol Unit Two Subdivision (District 6)

The above referenced request is scheduled for City Council Regular Agenda on December 21, 2004. The purpose of this memorandum is to provide you with general information concerning this request.

Under the City Building and Administrative Code, Section 18.02.103.1.1.6, developer may obtain building permits for up to 25% of the lots before all of the required subdivision improvements have been completed and accepted by the City. These are commonly called, "unconditional permits". "Conditional A" permits are permitted for the next 25% (up to 50% of the total) of lots. To obtain "Conditional A" permits, the developer must provide water and sewer service, curbing (but not street paving), drainage facilities, etc., necessary for the site in question. The developer must additionally provide a signed acknowledgment by the permit applicant that the certificate of occupancy for that lot will not be signed until all of the improvements affecting that lot have been completed and approved by the City.

Lastly, "Conditional B" permits may be issued if the developer complies with all of the "Conditional A" requirements and obtains permission from the City Council. In order for the City Council to grant such permission, the Council must make a finding, "...that additional permits should be issued based upon economic hardship or public benefit demonstrated by the subdivider".

At this hearing, then, the City Council should hear testimony or other evidence from the developer that justifies allowing more permits to be issued before all of the needed improvements have been accomplished, before deciding the issue.

If I can be of any further assistance regarding this matter, please don't hesitate to contact me at extension 4157.

# Paseos Del Sol Joint Venture

7-Dec-04

Bashar M. AbugaLyon  
Engineering Section Chief  
City Engineering Department  
2 Civic Center Plaza  
El Paso, TX 79901

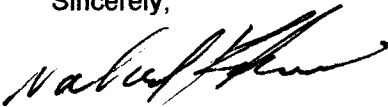
RE: Paseos Del Sol Unit Two  
( Conditional "B" Building Permits)

Dear Mr. AbugaLyon,

Paseos Del Sol Joint Venture, the owner and developer of Paseos Del Sol unit Two, is respectfully requesting the approval of Conditional "B" Building permits for this subdivision. All of subdivision improvements are completed. Request for subdivision maintenance acceptance has been submitted to the City of El Paso. Development agreements for this subdivision are filed with the County Clerk's Office and enclosed with the request are copies of the development agreements. The need for requesting Conditional "B" Permits to allow the home builder to fulfill contract obligations for pre-sale contracts signed for this subdivision. Not meeting the delivery dates set on the contracts would constitute an economic hardship to the homebuilder due to breach of contract.

Your positive response is critical and greatly appreciated.

Sincerely,



Nahed Khouri  
Project Manager

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as "Agreement") is entered into effective the 15 day of September, 2009, by and between Paseos Del Sol Joint Venture (hereinafter referred to as "Developer"), a Texas corporation, and Carefree Homes (hereinafter referred to as "Applicant"), a Texas corporation, for the purpose of complying with Title 18 (Building and Construction) of the El Paso Municipal Code.

WHEREAS, Developer is the owner and developer of Paseos Del Sol #2, a subdivision in the City of El Paso, El Paso County, Texas (hereinafter referred to as the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two-family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso Municipal Code (Building and Construction) (hereinafter referred to as the "Code"), provides that although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that the Developer and Applicant execute and file this Agreement in the office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Title 18 (Building and Construction) of the El Paso Municipal Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. **Incomplete Subdivision Improvements.** Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the Deputy Director for Engineering of the City of El Paso.
2. **Issuance of Building Permits.** Developer and Applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwelling (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (a) water and sewer service, (b) curbing conforming with the appropriate street design cross-section, (c) any drainage facility, and (d) any other remaining public improvements required by the Deputy Director for Engineering in order to adequately provide for construction on the lot (collectively hereinafter referred to as the "Minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:

A. an Unconditional Building Permit may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);

B. a Conditional "A" Building Permit may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in

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In addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and

C. a Conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to the construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the subdivider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.

3. **Risk of Commencement.** Although Developer will make every effort to complete the Subdivision Improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision Improvements, and hereby releases and holds Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision Improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of the Subdivision Improvements.
4. **Certificate of Occupancy.** Declarant and Applicant also acknowledge that a certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building and Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the Deputy Director for Engineering, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.
5. **Release.** Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The Deputy Director for Engineering is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.
6. **Binding Effect.** This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the date and year first set forth above.

DEVELOPER:

APPLICANT:

By: Wahed Khouri

By: Wahed Khouri

STATE OF TEXAS )

COUNTY OF EL PASO )

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This instrument was acknowledged before me on this 15th day of Sept 2004, by Wahed Khouri of said Corporation.

